



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 28, 2022

IN THE MATTER OF:

Appeal Board No. 622941

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, on the basis that the claimant did not meet any of the criteria in section 2102 of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) of 2020. The claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed April 6, 2022 (A.L.J. Case No. ), the Administrative Law Judge overruled the Commissioner of Labor's timeliness objection and overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, on the basis that the claimant did not meet any of the criteria in section 2102 of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) of 2020. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. Pursuant to the

language of the CARES Act, only "covered individuals" may be found eligible to receive the additional Pandemic Unemployment Assistance (PUA) provided for in

the Act, which further defines "covered individuals" as those who are not eligible for regular compensation or extended benefits under State or Federal law. We find that further testimony and other evidence is needed to determine whether the claimant was found eligible to receive regular or extended unemployment benefits under a state program, since as a matter of law the claimant is not entitled to PUA benefits if he is eligible for state unemployment benefits.

The parties are placed on notice that the hearing Judge will consider the additional reasons for the claimant's PUA ineligibility set forth by the Commissioner of Labor's representative at the hearing: that the claimant had established a claim in California and was eligible to receive regular unemployment benefits in that state, and that he had no recent work history in New York.

Although the evidence previously received into the record indicates that the claimant applied for benefits in California, and established a claim with an effective date and a weekly benefit rate, the evidence does not establish that the claimant had been found "eligible" to receive regular unemployment benefits in connection with his California claim. The parties are directed to produce evidence to establish whether the claimant was determined to be eligible to receive regular unemployment benefits in connection with his claim in California.

Such evidence shall include, but not be limited to, documentation from the State of California Employment Development Department (EDD) through which the claimant filed his application for unemployment benefits, and had a claim effective June 14, 2020. This documentation may be business records kept by the EDD in connection with the claimant's claim, and/or notice to the claimant regarding a determination on his eligibility, and the evidence may include testimony from a representative of the California EDD who has knowledge and experience to testify regarding the claimant's claim.

In addition, the parties shall be confronted with and questioned about specific entries on the "Claimant Log Record," received into evidence as Hearing Exhibit 5, that refer to the claimant's "other state" claim.

The parties are placed on notice that failure to produce evidence to establish this threshold issue may result in the hearing Judge or the Board taking an adverse inference against that party. Any evidence produced at the remand

hearing shall be received into evidence after the appropriate confrontation and opportunity for objection.

Further testimony and evidence are also necessary to determine the circumstances under which the claimant's employment ended in August 2020, including whether the claimant's separation from employment was voluntary or involuntary. The claimant shall be prepared to testify with specificity regarding the circumstances that led to his separation from employment, including whether those circumstances met any of the qualifying factors set forth in the CARES Act, and whether his separation was a direct result of COVID-19 pursuant to the provisions of the CARES Act and 20 C.F.R. §625.5 (c).

The claimant shall be confronted with, and specifically questioned about, his September 23, 2020 application for PUA benefits, including his responses on the application, which was received into evidence as Hearing Exhibit 7.

The hearing Judge may receive other evidence necessary to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a

hearing on the issue of the claimant's eligibility to receive Pandemic Unemployment Assistance, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings

of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER